laws of incorporation, which of course includes provisions for dissolution.[10] Unless this fact that no action will lie against a dissolved corporation is of weight, it is difficult to see why the same reasoning does not apply to cases of assignments by insolvent corporations.

In the recent case of *Martyne* v. *American Union Fire Ins. Co.* (N. Y., Ct. of App. 1915) 54 N. Y. L. J. 48, a fire insurance company of Pennsylvania had become insolvent and its affairs, under a statute of that state, were for purposes of liquidation, on its dissolution vested in the insurance commissioner. Subsequent to the dissolution, property of the corporation was attached in New York by the assignee of some policy holders. On motion to vacate by the liquidator, the attachment was dissolved. The court admitted that the law was settled in the case of natural persons, that a foreign statutory involuntary assignment does not pass title to property within this state, but declared that it did not wish to extend this doctrine to cases of foreign corporations which had been dissolved. The court recognized the theory that a person contracting with a corporation contracts with reference to the charter and acts of incorporation,[11] but the case seems to have been decided rather on the ground that comity should give effect to foreign statutory assignments. While there seems to be no valid distinction between involuntary assignments of the effects of a corporation and a natural person it is certainly a desirable limitation on the former rule,[12] which under modern conditions is at best of questionable value.

GIFTS OVER TO ISSUE.—Though it is often said that the object of the courts in the interpretation of wills is to ascertain the intention of the testator, certain words frequently used in the testamentary disposition of property have acquired a well-defined technical meaning more or less independent of their popular signification. Thus "issue" is in law equivalent to "descendants" including all of whatever generation,[1] since it is not to be supposed that the testator intended to divert the gift from those direct lines of his family which consist of the offspring of his deceased children.[2] Where, however, it appears that "issue" has been employed in the more popular meaning of "children", the courts so interpret it, *e. g.*, when such intention is manifested by its use correlatively with "parents",[3] and where such a signification is

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[10]Relfe *v.* Rundle (1880) 103 U. S. 222; Bockover *v.* Life Assn. of America (1883) 77 Va. 85; Fry *v.* Chart Oak Life Ins. Co. (C. C. 1887) 31 Fed. 197. In the last case the court expressed a doubt to to whether this rule would extend to others than members of the corporation.

[11]Relfe *v.* Rundle, *supra.*

[12]Platt J., in Holmes *v.* Remsen (1822) 20 Johns. *229, declared that the rule was not intended to extend to cases between the states.

[1]Soper *v.* Brown (1892) 136 N. Y. 244, 32 N. E. 768; Schmidt *v.* Jewett (1909) 195 N. Y. 486, 88 N. E. 1110; Jackson *v.* Jackson (1891) 153 Mass. 374, 26 N. E. 1112; Dexter *v.* Inches (1888) 147 Mass. 324, 17 N. E. 551; Robinson *v.* Sykes (1856) 23 Beav. 40; *cf.* Haydon *v.* Wilshere (1789) 3 T. R. 372.

[2]Matter of Farmers Loan & Trust Co. (1914) 213 N. Y. 168, 107 N. E. 340.

[3]Pruen *v.* Osborne (1840) 11 Sim. 132; Sibley *v.* Perry (1802) 7 Ves. Jr. *522. For a criticism of the latter case see Ralph *v.* Garrick (1870) 11 Ch. Div. 873, 882, 886.

clear in one clause and doubtful in another it is assumed that the word retains the same meaning throughout the will.[4]

Where, however, the term is used as the legal equivalent of descendants, the further question arises as to whether the distribution is to be *per capita* or *per stirpes*. In the absence of any indication of the testator's intention as to this, the rule both at common law and in New York requires a *per capita* distribution.[5] Indeed it is plain that such a distribution is necessary if all the descendants are to be made recipients of the testator's bounty, for a stirpital division cuts off those who have living persons between them and the common ancestor in the direct line of descent,[6] a result which seems inconsistent with an unqualified gift to "issue", if the term be taken as meaning "descendants". A different rule prevails, however, in Massachusetts, where such a gift following a life-estate implies a stirpital division, in the absence of any indication of a contrary intent.[7] Such a distribution among "issue" is not to be implied from the rule as to gifts to "heirs", for it is well settled that where a testator employs terms in their peculiar meaning under the statutes of descent and distribution, or otherwise refers to those enactments, the courts will turn to them for aid in interpreting the will, and the distribution among "next of kin", "heirs" or "legal representatives" is *per stirpes*, as it would be had the decedent died intestate.[8] But since "issue" is not a term taken from the law of descent and distribution, it is submitted that there is no reason for implying a stirpital division in such a case on the analogy of the intestacy laws. Even in jurisdictions, however, where a *per capita* distribution is favored, the rule "yields to a very faint glimpse of a contrary intent".[9] Such an intent is said to appear where the issue are treated as a class,[10] or where a similar gift in another clause of the will is plainly *per stirpes*,[11] or where the general scheme of the will shows that the tes-

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[4]Silsbee *v.* Silsbee (1912) 211 Mass. 105, 97 N. E. 758; *cf.* Arnold *v.* Alden (1898) 173 Ill. 229, 50 N. E. 704.

[5]Davenport *v.* Hanbury (1796) 3 Ves. Jr. *257; Wistar *v.* Scott (1884) 105 Pa. 200; Pearce *v.* Rickard (1893) 18 R. I. 142, 26 Atl. 38; Schmidt *v.* Jewett, *supra*; Matter of Bauerdorf (N. Y. 1912) 77 Misc. 656, 138 N. Y. Supp. 673; see Soper *v.* Brown, *supra*; Leigh *v.* Norbury (1807) 13 Ves. Jr. 340.

[6]Robinson *v.* Sykes, *supra*.

[7]Jackson *v.* Jackson, *supra*; Coates *v.* Burton (1906) 191 Mass. 180, 77 N. E. 311, where even the words "share and share alike" were held not to show an intent that the issue should take *per capita*. See, also, discussion of the Massachusetts doctrine in Matter of Bauerdorf, *supra*.

[8]Slosson *v.* Lynch (N. Y. 1864) 43 Barb. 147; Murdock *v.* Ward (1876) 67 N. Y. 387; Duffy *v.* Hargan (1901) 62 N. J. Eq. 588, 50 Atl. 678; Woodward *v.* James (1889) 115 N. Y. 346, 22 N. E. 150; Ashburner's Estate, Trust Co's Appeal (1894) 159 Pa. 545, 28 Atl. 361; see Minter's Appeal (1861) 40 Pa. 111; Lockhart *v.* Lockhart (1857) 56 N. C. 205. In England and in Massachusetts, however, the words are given their popular meaning, unless it is apparent that they are used in a technical sense. Lightfoot *v.* Maybery [1914] A. C. 782; Rotch *v.* Loring (1897) 169 Mass. 190, 47 N. E. 660.

[9]Ferrer *v.* Pyne (1880) 81 N. Y. 281; Matter of Farmers Loan & Trust Co., *supra*; Davis *v.* Bennett (1862) 4 De. G., F., & J., *327; *cf.* Matter of Bauerdorf, *supra*.

[10]Ferrer *v.* Pyne, *supra*; see Minter's Appeal, *supra*.

[11]Matter of Farmers Loan & Trust Co., *supra*; Ferrer *v.* Pyne, *supra*.

tator meant to divide his property among the branches of his family rather than among all the individuals composing them.[12]

In the recent case of *Matter of Union Trust Co.* (N. Y. App. Div., 1st Dept. 1915) 156 N. Y. Supp. 32,[13] the will provided that, under the circumstances, which actually occurred, the share of the testator's property held in trust for one of his daughters for life, should at her death, pass "in equal portions" to the "issue" of the other. The Appellate Division agreed with the Surrogate in holding that "issue" was equivalent to descendants, but differed from him in concluding that the whole scheme of the will showed that the testator intended equality of distribution among his grandchildren, and that the division among the issue must therefore be *per stirpes* and not *per capita*. Whether the particular document under consideration afforded that "very faint glimpse of a contrary intent" which is sufficient to take it out of the operation of the general rule in New York, is a question upon which there is room for a reasonable difference of opinion, but the decision may be taken as indicating the tendency of the courts to grasp any opportunity to substitute what they believe to be the fairer method of distribution usually intended by the testator, for the *per capita* division required by the strict rule.[14]

INSANITY AS A DEFENCE TO A CRIMINAL CHARGE.—The history of the defence of insanity in the criminal law, from the time it was first recognized that an insane person was not punishable, may be briefly shown by noting the various so-called tests of insanity that have been applied by the courts of law in England and in this country. In early times there was no acquittal; but a special verdict declared the prisoner's madness and he was pardoned by the king.[1] Later, the accused's responsibility was said to depend upon whether he was totally deprived of his understanding and memory and knew what he was doing "no more than an infant, than a brute, or a wild beast".[2] In 1812, in the answers given by the judges to the House of Lords in *M'Naghten's Case*,[3] were suggested those instructions which have supplied the majority of modern courts with rules of law applicable to the defence of insanity.[4] These have been resolved into what is to-day known

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[12]Dexter *v.* Inches, *supra*; Coates *v.* Burton, *supra.*

[13]Modifying decree of the Surrogate in Matter of Union Trust Co. (N. Y. 1915) 89 Misc. 69, 151 N. Y. Supp. 246.

[14]The opinion in the principal case admits that it may be going further than any reported decision, but expresses dissatisfaction with the practical results of the ordinary rule.

[1]2 Stephen, History of Criminal Law, 151; 2 Pollock & Maitland, History of English Law, 480.

[2]Rex *v.* Arnold (1724) 16 How. St. Tr. 765.

[3]M'Naghten's Case (1843) 10 Cl. & F. 200.

[4]In Hadfield's Trial (1800) 27 How. St. Tr. 1281, a theory of delusional insanity was approved and was later elaborated upon in M'Naghten's Case, *supra.* A crime, in consequence of some delusion, was excused only if it would be justified if the delusion were actually true. This theory finds support among text writers and is applied with modifications by many modern courts. See Browne, Medical Jurisprudence, § 8; Davis *v.* State (1902) 44 Fla. 32, 32 So. 822; Merritt *v.* State (1898) 39 Tex. Cr. 70, 45 S. W. 21; Thurman *v.* State (1891) 32 Neb. 224, 49 N. W. 338. In practically every case, however, the right and wrong test alone as applied to-day would cover the facts of such delusional or partial insanity.